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JAMES V. LACY State Bar Number 82186
Civic Center Plaza
30011 Ivy Glenn Dr., Suite 223
Laguna Niguel, CA 92677
(949) 495-3314
Facsimile (949) 495-3459

DANIEL LOWENSTEIN State Bar Number 44283
c/o UCLA Law School
405 Hilgard
Los Angeles, CA 90095
(310) 825-5148

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Larry Levine, Tom Kaptain,
Scott Hart, California
Republican Assembly,

Plaintiffs,

vs.

Fair Political Practices

Commission,

Defendant.

Case No. **CIV-S-02-0199 LKK DAD**

VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

(42 U.S.C. Section 1983; 28
U.S.C. Sections 1331, 1343)

INTRODUCTION

On March 1, 2001, this court entered an Order in *California Pro-life Council Political Action Committee v. Scully*, No. CIV. S-96-1965 LKK/DAD, ruling that certain provisions of Proposition 208 affecting slate mail are unconstitutional. Plaintiffs in the present case, who include one of the slate mail plaintiffs in the *California Pro-life Council* case, challenge two additional California slate mail provisions as unconstitutional. These two

2
1 provisions -- California Government Code Section 84305.5(a)(6)¹,
2 enacted by the California Legislature in 1996 (and, we contend,
3 repealed by Proposition 208, as explained below), and Section
4 84305.6, enacted by an initiative, Proposition 34, in 2000 --
5 require slate mailers to affirm that their support or opposition
6 to certain candidates and ballot propositions are "NOT THE
7 POSITION [or, under Proposition 34 "NOT THE OFFICIAL POSITION"]
8 OF THE _____ PARTY."

9 Plaintiffs in the present action maintain that these two
10 requirements violate their first amendment right to freedom of
11 speech. This position is supported in general by the same
12 authorities relied upon by the plaintiffs and by this court in
13 *California Prolife Council*. The disclosure requirements in
14 question in the present case are even more onerous and more
15 intrusive of first amendment rights than the requirements in
16 *California Prolife Council*. In addition, plaintiffs maintain
17 that Sections 84305.5(a)(6) and 84305.6 are unconstitutionally
18 vague.

19 In addition to their constitutional claims, plaintiffs in
20 this action bring a statutory claim regarding Section
21 84305.5(a)(1), (2), (4), and (6). Unlike the usual statutory
22 controversy in which the meaning of the statutory language or
23 its application to a particular circumstance is in dispute, the
24 controversy in this case is whether the aforementioned
25 subsections are statutes at all. Defendant Fair Political
26 Practices Commission contends that they are. Plaintiffs contend
27

28

¹ Unless otherwise indicated, section references in this Complaint are to the California Government Code.

1 that these provisions were repealed by Proposition 208, and are
2 therefore no longer a part of the California Government Code.

3 Because of the imminence of the 2002 primary election in
4 California, plaintiffs seek a preliminary injunction in this
5 action. However, their claim for preliminary relief is founded
6 solely on their constitutional claims. The probability that
7 plaintiffs will succeed on the merits of these claims is
8 overwhelming, given the decision of this court in *California*
9 *Pro-life Council*. The admittedly more arcane (though no more
10 doubtful) questions raised by plaintiffs' statutory claims can
11 await disposition at trial or on a motion for summary judgment.

12 I. JURISDICTION

13 1. This Court has jurisdiction pursuant to 28 U.S.C. §§
14 1331, 1343(a)(3) and 1343(a)(4). This is a civil action brought
15 under 42 U.S.C. § 1983 and arising under the Constitution of the
16 United States, specifically the First and Fourteenth Amendments.
17 Plaintiffs in this action seek to redress the deprivation, under
18 color of State law, of rights, privileges, and immunities
19 secured by the Constitution of the United States.

20 II. VENUE

21 2. Venue in this District is proper pursuant to 28 U.S.C.
22 § 1391(b) because a substantial part of the events or omissions
23 giving rise to the claim occurred within this District, and
24 Defendant Fair Political Practices Commission ("FPPC") is an
25 agency of the State of California which maintains its office and
26 conducts business in this District.

27 ///

28 ///

III. NATURE OF THE CASE

3. This action seeks injunctive and declaratory relief against enforcement of certain California regulations affecting "slate mailers" and "slate mailer organizations."

4. A "slate mailer" means a mass mailing which supports or opposes a total of four or more candidates or ballot measures. Section 82048.3. A "slate mailer organization" includes any person who, directly or indirectly, is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers, and who receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers. Section 82048.4.

5. The regulations in question require particular affirmations to appear on the face of certain slate mailers. Plaintiffs' challenge to these regulations is based on overlapping constitutional and statutory claims. Section 84305.6, which contains one of the regulations in question, is unquestionably a California statute, but it is unconstitutional. Former Section 84305.5(a)(6), was repealed by Proposition 208, and is no longer a California statute. Alternatively, even if Section 84305.5(a)(6) is a California statute, it is unconstitutional. The contested portions of Sections 84305.5(a)(1), (2), and (4) were repealed by Proposition 208 and replaced by new provisions. The new provisions were ruled unconstitutional by this court in *California Pro-life Council Political Action Committee v. Scully*. The contested provisions,

1 having been repealed, are no longer part of the law of
2 California. In this action, plaintiffs do not raise the
3 question whether these contested portions, if they were still in
4 force, would be unconstitutional.

5 IV. PARTIES

6 6. Plaintiff Larry Levine is a sole proprietor doing
7 business as Larry Levine and Associates, with his principal
8 place of business in Sherman Oaks, California. Each election
9 cycle Plaintiff Levine publishes one or more slate mailers for
10 local and statewide elections in California and exercises
11 control over the selection of candidates and measures to be
12 supported or opposed in his slate mailers. Plaintiff Levine
13 publishes slate mail through an organization he controls known
14 as the "Voter Information Guide." Plaintiff Levine receives or
15 is promised payments totaling five hundred dollars (\$500) or
16 more in a calendar year for the production of one or more of his
17 slate mailers. Plaintiff Levine sends his slate mailers to
18 voters within the jurisdiction of the U.S. District Court for
19 the Eastern District of California. He is a registered Democrat
20 and his slate mailers generally support Democratic candidates
21 and issues. Plaintiff Levine is a slate mailer organization as
22 defined by Section 82048.5.

23 7. Plaintiff Tom Kaptain is a sole proprietor doing
24 business as Elite Advertising Consultants, with his principal
25 place of business in Los Angeles, California. Each election
26 cycle Plaintiff Kaptain publishes one or more slate mailers for
27 local and statewide elections in California and exercises
28 control over the selection of candidates and measures to be

1 supported or opposed in his slate mailers. Plaintiff Kaptain
2 publishes slate mail through an organization he controls known
3 as the "Democratic Voters Choice." Plaintiff Kaptain receives
4 or is promised payments totaling five hundred dollars (\$500) or
5 more in a calendar year for the production of one or more of his
6 slate mailers. Plaintiff Kaptain sends his slate mailers to
7 voters within the jurisdiction of the U.S. District Court for
8 the Eastern District of California. His slate mailers generally
9 support Democratic candidates and issues. Plaintiff Kaptain is
10 a slate mailer organization as defined by Section 82048.5.

11 8. Plaintiff Scott Hart is a sole proprietor doing
12 business as Scott Hart and Associates, LLC, with his principal
13 place of business in Orange County, California. Each election
14 cycle Plaintiff Hart publishes one or more slate mailers for
15 local and statewide elections in California and exercises
16 control over the selection of candidates and measures to be
17 supported or opposed in his slate mailers. Plaintiff Hart
18 publishes slate mail through an organization he controls known
19 as the "Continuing the Republican Revolution." Plaintiff Hart
20 receives or is promised payments totaling five hundred dollars
21 (\$500) or more in a calendar year for the production of one or
22 more of his slate mailers. Plaintiff Hart sends his slate
23 mailers to voters within the jurisdiction of the U.S. District
24 Court for the Eastern District of California. He is a
25 registered Republican and his slate mailers generally support
26 Republican candidates and issues. Plaintiff Hart is a slate
27 mailer organization as defined by Section 82048.5.

1 9. Plaintiff California Republican Assembly ("CRA") is a
2 statewide volunteer membership organization of registered
3 Republicans founded in 1934 by Earl Warren, which has operated
4 continuously since 1934. CRA tends to support the more
5 "conservative" candidates in party primaries. CRA is a
6 permanently affiliated organization of the California Republican
7 Party ("CRP") according to Article III, Section 3.01(D)(2) of
8 the Bylaws of the CRP. CRA publishes a slate mailer entitled
9 "CRA Election Voter Guide." In the general election in 1998,
10 CRA Election Voter Guide endorsed a "no" position on Proposition
11 8. In the same election, the CRP sent a mailing to Republican
12 voters endorsing a "yes" vote on Proposition 8.

13 10. Defendant FPPC is the agency of the State of
14 California that administers the California Political Reform Act
15 ("Act") (Sections 81000 et seq.), and amendments thereto,
16 including the provisions and former provisions that are in
17 question in the present action.

18 V. CONSTITUTIONAL CLAIMS

19 11. In 2000, California voters enacted an initiative known
20 as Proposition 34. Proposition 34 enacted Section 84305.6,
21 which reads as follows in pertinent part:

22 In addition to the requirements of Section 84305.5,
23 a slate mailer organization ... may not send a slate
24 mailer unless any recommendation in the slate mailer
25 to support or oppose a ballot measure or to support
26 or oppose a candidate that is different from the
27 official recommendation to support or oppose by the
28 political party that the mailer appears by

1 representation or indicia to represent is
2 accompanied, immediately below the ballot measure or
3 candidate recommendation in the slate mailer, in no
4 less than nine-point roman boldface type in a color
5 or print that contrasts with the background so as to
6 be easily legible, the following notice: "THIS IS
7 NOT THE OFFICIAL POSITION OF THE (political party
8 that the mailer appears by representation or indicia
9 to represent) PARTY."

10 Section 84305.6 is hereinafter referred to as the Proposition 34
11 provision or, unless the context makes clear that the reference
12 is to the entire proposition and not simply to Section 84305.6,
13 as Proposition 34. The entire proposition, including Section
14 84305.6, is set forth in Exhibit 1 to this Complaint.

15 12. In 1996, the legislature enacted Section 84305.5(a)(6)
16 (hereinafter referred to as Section (a)(6)). As is alleged
17 below in the "STATUTORY CLAIMS" portion of this Complaint,
18 Section (a)(6) was repealed later in 1996 by Proposition 208.
19 However, Defendant FPPC maintains that Section (a)(6) is still a
20 part of the law of California. For purposes of this portion of
21 the Complaint ("CONSTITUTIONAL CLAIMS") only, we assume the
22 correctness of the FPPC's position. Section (a)(6) prohibits a
23 slate mailer organization from sending a slate mailer unless:

24 Any candidate endorsement appearing in the slate
25 mailer that differs from the official endorsement of
26 the political party which the mailer appears by
27 representation or indicia to represent is
28 accompanied immediately below the endorsement, in no

1 less than 9-point roman boldface type which shall be
2 in a color or print that contrasts with the
3 background so as to be easily legible, the following
4 notice: THIS IS NOT THE POSITION OF THE (political
5 party which the mailer appears by representation or
6 indicia to represent) PARTY.

7 13. Violation of Proposition 34 and of Section (a)(6) is a
8 misdemeanor. See Section 91000. Violations are also subject to
9 maximum administrative and civil penalties of \$5,000 per
10 violation, and criminal penalties of \$10,000 per violation or
11 three times the amount not reported or properly expended.

12 14. Plaintiffs contend that Proposition 34 and Section
13 (a)(6) are unconstitutional and Defendant FPFC claims that they
14 are constitutional. A real controversy exists which must be
15 resolved by this court. Unless ordered to do otherwise by this
16 court, Defendant FPFC will enforce Proposition 34 and Section
17 (a)(6) in violation of plaintiffs' constitutional rights.
18 Plaintiffs will suffer irreparable injury in the form of
19 deprivation of free speech and association rights as a result of
20 such enforcement. Plaintiffs have no other plain, speedy, or
21 adequate remedy at law.

22 15. Proposition 34 and Section (a)(6) stigmatize the
23 contents of plaintiffs' slate mail publications and
24 unnecessarily and duplicatively expropriate space from
25 Plaintiffs' publications -- space that plaintiffs wish to and
26 are entitled to use to communicate their own political messages
27 -- so that the space can be used for communication of the
28 state's political messages, as specified in Proposition 34 and

1 Section (a)(6). In particular, plaintiffs are required to
2 publicize the opposing political views of other private
3 entities, the "official" arms of political parties, as a
4 condition imposed on their publicizing their own views. These
5 requirements have and are intended to have a seriously
6 inhibitory and distorting effect on plaintiffs' ability to
7 engage in political speech. The requirements therefore are
8 viewpoint-based regulations and presumptively unconstitutional.
9 To be justified, they would have to be necessitated by a
10 compelling state interest and narrowly tailored to avoid
11 infringement of speech and associational rights beyond what is
12 necessary for the accomplishment of the state's interest.

13 16. Proposition 34 and Section (a)(6) will seriously deter
14 candidates and ballot measure campaigns that have failed to win
15 the endorsement of central committees of a given political party
16 from participating in slate mailers oriented to voters of that
17 party. In addition, Proposition 34 and Section (a)(6) will
18 seriously deter slate mailer organizations from endorsing such
19 candidates and ballot measure campaigns, because the forced
20 affirmations may cast discredit not only on the particular
21 candidate or ballot measure, but on all other recommended
22 candidates and ballot measures, if the recipient of the mailer
23 concludes from the forced affirmation that the slate mailer is
24 not truly representative of the party that the voter favors.

25 17. None of the findings of fact or declarations of
26 purpose set forth in the text of Proposition 34 (see Section 1
27 of Proposition 34, set forth in Exhibit A to this Complaint)
28

1 contains any justification for the slate mail disclosure
2 requirement contained in Proposition 34 or in Section (a)(6).

3 18. None of the findings of fact or declarations of
4 purpose set forth in the original Political Reform Act, approved
5 by the voters in 1974 (see Sections 81001 and 81002) contains
6 any justification for the slate mail disclosure requirements
7 contained in Proposition 34 and Section (a)(6).

8 19. None of the declarations of purpose set forth in
9 Proposition 208, approved by the voters in 1996 (see Section
10 85102) contains any justification for the slate mail disclosure
11 requirements contained in Proposition 34 and Section (a)(6).

12 20. It may well be desirable for voters to know the views
13 of political parties relating to ballot measures and to
14 candidates in primaries and nonpartisan elections, just as it is
15 desirable for voters to know a great many other facts about such
16 ballot measures and candidates. Conceivably, the state's
17 interest in helping voters learn of political party views would
18 justify the state devoting its resources to communicating these
19 views to voters. But the state's interest in communicating
20 political party views -- assuming that interest is a legitimate
21 one -- cannot justify the state's commandeering political
22 messages paid for and distributed by private persons such as
23 slate mailer organizations and partially displacing the
24 speaker's message with that of the state.

25 21. The displacement of the speaker's intended message
26 would be onerous even if the state's substitute message were a
27 neutral one. Proposition 34 and Section (a)(6) are far more
28 onerous, because the state's imposed message is plainly and

1 incontrovertibly calculated to undermine the speaker's message.
2 By definition, the requirements come into effect only when the
3 slate mailer is appealing to adherents of a particular party
4 organization. A mandatory affirmation that the position being
5 recommended is not the position (or not the official position)
6 of that party is bound to undermine the recommendation and the
7 speaker's message in the eyes of many if not most of the
8 recipients of the message.

9 22. Proposition 34 and Section (a)(6) cannot be justified
10 as measures to prevent deceptive advertising. The reason is
11 that "official" party groups -- in particular, state and county
12 central committees -- do not "own" the party position on ballot
13 measures and primary and nonpartisan candidates. To be sure,
14 the party central committees have a right to endorse positions
15 on candidates and ballot measures, see, e.g., *Eu v. San*
16 *Francisco County Democratic Central Committee*, 489 U.S. 214
17 (1989), but those endorsements are not binding on party members,
18 party leaders, or party voters. To the contrary, positions on
19 ballot measures and candidates in primary and nonpartisan
20 elections are often matters of intense controversy within the
21 major parties. Therefore, there is nothing intrinsically
22 deceptive about appealing to Democrats as Democrats, or
23 Republicans as Republicans, in favor of a position different
24 from that of a Democratic or Republican central committee.

25 23. Although Proposition 34 and Section (a)(6) cannot be
26 justified as anti-deception measures, the requirements
27 themselves are intrinsically deceptive. Party central
28 committees often decline to endorse any position on a ballot

1 measure or any candidate in a primary or nonpartisan election.
2 As is alleged below in connection with the issue of vagueness,
3 Proposition 34 and Section (a) (6) are unclear on whether the
4 disclaimer is required if the slate mailer recommends a position
5 or candidate when the party central committee has taken no
6 position. Either way, the requirements are inherently
7 misleading, because they require one of two actions by the slate
8 mailer organization -- disclaimer or no disclaimer -- when there
9 are three possible situations -- the slate mailer endorsement is
10 the same as the party central committee's, the slate mailer
11 endorsement is the opposite of the party central committee's,
12 and the slate mailer has endorsed when the party central
13 committee has taken no position. If the disclaimer is required
14 whenever the party central committee has not made the same
15 endorsement as the slate mailer, then the requirement conveys
16 the false impression that the slate mailer endorsement is
17 opposed to the "official party position" when in fact the party
18 central committee has taken no position. On the other hand, if
19 the disclaimer is required only when there is an actual
20 opposition between the slate mailer's endorsement and the party
21 central committee, then the absence of a disclaimer in cases
22 where the party central committee has made no endorsement will
23 create the false impression that the slate mailer endorsement
24 reflects an "official party position." Thus, the disclaimers of
25 Proposition 34 and Section (a) (6) are intrinsically deceptive
26 and misleading, no matter how they are interpreted. As such,
27 they cannot further any legitimate state interest, much less a
28 compelling one.

1 24. Whatever legitimate goal of preventing deception that
2 Proposition 34 and Section (a)(6) may have of preventing
3 deception can be accomplished by the far less restrictive means
4 of a disclosure on a slate mailer that the slate mailer is not
5 an official party publication. A requirement of just such a
6 disclosure was adopted by the California legislature in 1987
7 when it adopted former Section 84305.5(a)(2). Though that
8 requirement itself may be vulnerable to challenge under the
9 first amendment, no such challenge was ever made. In 1996,
10 Proposition 208 replaced that requirement by a different one,
11 which this court ruled was unconstitutional in *California*
12 *Prolife Council*. Plaintiffs intend to continue to make the
13 disclosures required by former Section 84305.5(a)(2). If the
14 California legislature or California voters believe all slate
15 mailer organizations should be required to do so, nothing
16 prevents them from reenacting the former Section 84305.5(a)(2).

17 25. There are many organizations that endorse candidates
18 and ballot measures and that are highly influential with voters
19 of a particular political party, such as environmental
20 organizations in the case of Democrats and taxpayer
21 organizations in the case of Republicans. Proposition 34 and
22 Section (a)(6) will have unfair and anomalous results when a
23 Democratic central committee supports a ballot measure that an
24 environmental group opposes, or a Republican central committee
25 endorses Candidate A while a taxpayer group endorses A's
26 opponent, Candidate B. A Democratic slate opposing the
27 proposition will have to affirm that this is not the official
28 position of the Democratic Party, but another Democratic slate

1 will not have to disclose that its view is not the official
2 position of the environmental organization. And a Republican
3 slate endorsing Candidate B will have to affirm that this is not
4 the official position of the Republican Party, but another
5 Republican slate will not have to disclose that its position is
6 not the official position of the taxpayer group. These examples
7 show that Proposition 34 and Section (a)(6) are discriminatory
8 provisions representing nothing more than state favoritism,
9 commandeering the messages of private speakers to privilege the
10 views of one (admittedly important) set of interests—namely, the
11 official political party committees—over all others.

12 26. For the reasons stated in Paragraphs 17 through 25, no
13 compelling state interest justifies Proposition 34 or Section
14 (a)(6).

15 27. Proposition 34 is unconstitutionally vague because its
16 language does not make clear when it is applicable and what is
17 required when it is applicable. For example:

18 a. The Proposition 34 disclaimer is required only if
19 the slate mailer recommendation "is different from the
20 official recommendation" by a political party. It is
21 unclear whether a slate mailer recommendation when the
22 political party has made no official recommendation is
23 "different from the official recommendation" of the party.

24 b. It is also unclear what is meant by an "official
25 recommendation" by a party in many situations. For
26 example, it is unclear whether a recommendation by an
27 organization officially chartered by the party is an
28 "official recommendation" by the party, it is unclear

1 whether a county central committee recommendation is an
2 "official recommendation" by the party in a contest voted
3 on in more than one county, and it is unclear what the
4 "official recommendation" of the party is if different
5 party committees have taken opposing positions or if some
6 party committees have made recommendations and others have
7 taken no position.

8 c. The disclaimer requirement applies only if the
9 slate mailer "appears by representation or indicia to
10 represent" a particular party. Other than the extremely
11 unlikely case of a slate mailer that falsely stated
12 explicitly that it represents a particular party, it is
13 unclear when this condition is met. For example, it is
14 unclear whether pictures of party heroes (Franklin
15 Roosevelt and John Kennedy for the Democrats, Abraham
16 Lincoln and Ronald Reagan for the Republicans) would
17 constitute sufficient "representation or indicia." It is
18 unclear whether the fact that the slate mailer uniformly
19 endorses all Democratic or all Republican candidates,
20 including in visible races such as President and Vice-
21 President, U.S. Senator and Governor, would constitute
22 "representation or indicia." And it is unclear whether
23 "the mailer appears by representation or indicia to
24 represent" a party regardless of its content, if it
25 contains the statement, formerly required by Section
26 84305.5(a)(2), that it is not published by an official
27 party organization.
28

1 d. The disclaimer in Proposition 34 is set forth in
2 all-capital letters, except for the parenthetical
3 indicating the place where the name of the party appears.
4 It is unclear whether the disclaimer on a slate mailer is
5 required to appear in all-capital letters, in all-capital
6 letters except for the name of the party, or, at the option
7 of the slate mailer organization, in upper and lower case
8 letters.

9 28. Section (a)(6) is unconstitutionally vague for the
10 same reasons described in Paragraph 27 (?) for Proposition 34.

11 29. In addition to the vagueness attributable to
12 Proposition 34 and Section (a)(6) when each is considered in
13 isolation, the vagueness is compounded when they are considered
14 together. For example.

15 a. Proposition 34 refers to an "official
16 recommendation" of a political party, whereas Section
17 (a)(6) refers to an "official endorsement" of a political
18 party. It is unclear whether these different terms in the
19 two sections have different meanings and, if so, how they
20 differ.

21 b. In most cases involving candidates, where a
22 disclaimer is required by one of the provisions it will
23 also be required by the other. The disclaimer required by
24 Proposition 34 reads: "THIS IS NOT THE OFFICIAL POSITION OF
25 THE _____ PARTY." The disclaimer required by Section
26 (a)(6) reads: "THIS IS NOT THE POSITION OF THE _____
27 PARTY." Thus, the word "OFFICIAL" is included in
28 Proposition 34 but not in Section (a)(6). When both

1 provisions are applicable, it is unclear whether the slate
2 mailer organization is required to print the Proposition 34
3 disclaimer, the Section (a)(6) disclaimer, or both.

4 30. For the foregoing reasons, Proposition 34 and Section
5 (a)(6) violate plaintiffs' rights under the free speech and
6 association guarantees of the First Amendment as incorporated in
7 the Fourteenth Amendment, and under the due process and equal
8 protection guarantees of the Fourteenth Amendment. There is an
9 actual controversy between the parties because plaintiffs
10 contend and defendant denies that the statute violates the First
11 and Fourteenth Amendments to the United States Constitution.

12 VI. STATUTORY CLAIMS

13 31. Section (a)(6) was added to Section 84305.5 by the
14 California legislature in 1996. Later in 1996, California
15 voters approved an initiative measure, Proposition 208.
16 Proposition 208 amended and replaced Section 84305.5. The new
17 version of Section 84305.5 enacted by Proposition 208 did not
18 include Section (a)(6). Proposition 208 therefore had the
19 effect of repealing Section (a)(6), which is therefore no longer
20 a part of California law.

21 32. In 1987, the California legislature enacted a new law
22 regulating slate mail. Section 84305.5(a)(1), (2), and (4),
23 required that certain disclosures appear on slate mailers.
24 Hereinafter, these paragraphs of the version of Section 84305.5
25 passed by the legislature in 1987, as they existed immediately
26 prior to the passage of Proposition 208 in 1996, are referred to
27 as "the asterisk disclosure provisions." One of the legislative
28 disclosure provisions required that candidates and ballot

1 measures endorsed on a slate mailer to be identified with an
2 asterisk if they had contributed to the costs of the slate
3 mailer.

4 33. Proposition 208 substantially amended the legislative
5 disclosure provisions by repealing some portions and replacing
6 them with others. Hereinafter, the new version of Section
7 84305.5(a)(1), (2), and (4), adopted by Proposition 208 and
8 continuing to appear in the California Government Code, is
9 referred to as "the dollar sign disclosure provisions."

10 34. This court ruled on March 1, 2001 that the dollar sign
11 disclosure provisions are unconstitutional and therefore
12 unenforceable in *California Prolife Council Political Action*
13 *Committee v. Scully*, CIV. S-96-1965 LKK DAD.

14 35. One of the reasons this court declared the dollar sign
15 disclosure provisions unconstitutional was that instead of using
16 asterisks to identify candidates and ballot measures that had
17 contributed to the costs of a slate mailer, as the legislative
18 disclosure provisions had done, Proposition 208 required
19 identification by three dollar signs. All reference to
20 asterisks in the statute were repealed by Proposition 208.

21 36. By similar reasoning, it is impossible to read any of
22 the asterisk disclosure provisions into the Proposition 208
23 disclosure provisions. In each case, some or all of the
24 language that would be needed to bring back the requirements of
25 the asterisk disclosure provisions was repealed by Proposition
26 208.

27 37. The asterisk disclosure provisions having been
28 repealed and the Proposition 208 disclosure provisions having

1 been declared unconstitutional, there is no portion of Section
2 84305.5(a)(1), (2), and (4) that is both a part of California
3 law and enforceable.

4 38. There is no constitutional portion of the dollar sign
5 disclosure provisions that is severable from the portion that
6 was declared unconstitutional by this court in *California*
7 *Prolife Council*.

8 39. For the foregoing reasons, the asterisk disclosure
9 provisions and Section (a)(6) are no longer the law of
10 California. There is an actual controversy between the parties
11 because plaintiffs contend and defendant denies that these
12 provisions have been repealed.

13 VII. IRREPARABLE INJURY AND INJUNCTIVE RELIEF

14 40. Plaintiffs wish to exercise their First Amendment
15 right to participate in political campaigns by publishing their
16 slate mailers free of government interference with the content
17 and message of their "slate mailers" and free of the requirement
18 that they gratuitously publicize adverse views of political
19 party central committees or anyone else. Due to a dispute as to
20 the constitutionality of Proposition 34 and Section (a)(6) and
21 the threat of enforcement of these provisions, plaintiffs are
22 unable to participate in political campaigns and conduct their
23 publishing businesses in a manner consistent with their
24 constitutional rights.

25 41. Plaintiffs are preparing to send slate mailers in
26 connection with the statewide primary to be held in California
27 on March 5, 2002 and in future. Notwithstanding their belief
28 that the requirements imposed by Proposition 34 and Section

1 (a) (6) are unconstitutional, if they decline to comply with
2 those requirements they face the likelihood of civil or criminal
3 prosecution. Plaintiffs' ability to express their own messages
4 is further impaired by the stigmatizing content of the state's
5 mandated messages. Thus, Proposition 34 and Section (a) (6) have
6 infringed on the exercise of plaintiffs' first amendment rights
7 of free speech and association.

8 42. Plaintiffs are entitled to be free of regulations that
9 are not actually a part of the law of California. Defendant
10 FPPC has made clear its intent to seek enforcement of Section
11 (a) (6) and the asterisk disclosure provisions, despite the fact
12 that all these provisions were repealed by Proposition 208.
13 Therefore, if plaintiffs decline to adhere to these repealed
14 requirements, they face the likelihood of civil or criminal
15 prosecution.

16 43. Plaintiffs have no plain, adequate, or complete remedy
17 at law. Any other remedy to which plaintiffs could be remitted
18 would be attended by such uncertainties and delays that it would
19 cause further irreparable injury, damage, and inconvenience to
20 plaintiffs. Damages are not adequate to protect plaintiffs from
21 the continuing abridgement of the exercise of their rights under
22 the First and Fourteenth Amendments and their rights not to be
23 regulated by statutes that have been repealed.

24
25 WHEREFORE, plaintiffs pray:

- 26 1. For preliminary and permanent injunctive relief enjoining
27 defendant from enforcing California Government Code Section
28 84305.6 and the supposed California Government Code Section

1 84305.5(a)(6), on the ground that said sections are
2 unconstitutional;

3 2. For the declaratory judgment of this court, declaring that
4 California Government Code Section 84305.6 and the supposed
5 California Government Code Section 84305.5(a)(6) are
6 unconstitutional and therefore unenforceable;

7 3. For the declaratory judgment of this court, declaring that
8 California Government Code Section 84305.5(a)(6) was repealed
9 by Proposition 208 and is therefore unenforceable;

10 4. For the declaratory judgment of this court, declaring that
11 there is no portion of California Government Code Section
12 84305.5(a)(1), (2), or (4), that may be severed from the
13 unconstitutional portion of those provisions, so that the
14 provisions in their entirety are unenforceable;

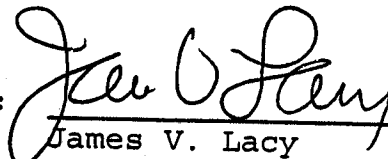
15 5. That pursuant to 42 U.S.C. § 1988, plaintiffs be awarded their
16 costs and attorney fees incurred in this action; and

17 6. For such other and further relief as the court deems proper
18 and just.

19 Dated: January 23, 2002

Respectfully submitted,

20 JAMES V. LACY
21 DANIEL LOWENSTEIN

22
23 By: 
24 James V. Lacy

25 Attorneys for Plaintiffs
26 Larry Levine, Tom Kaptain,
27 Scott Hart, California
28 Republican Assembly

VERIFICATION

I, Richard Mountjoy, verify as follows:

I am the President of the California Republican Assembly, one of the plaintiffs in this action. I have read the foregoing Verified Complaint for Injunctive and Declaratory Relief and know the contents thereof and certify that the same are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of January, 2002 at Monrovia, California.


Richard Mountjoy